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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 981.

THE PITTSTON COMPANY,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY MEMORANDUM FOR PETITIONER.

ROLLIN BROWNE,
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New York 4, N. Y.

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1. The respondent erred in his statement of the facts in paragraph 3 on page 4 of his brief. The Stipulation of Facts filed with the Tax Court states in paragraph 7 that the coal purchased by taxpayer from Russell during the years 1945, 1946, 1947, 1948 and 1949 aggregated 1,959,563.15 tons at a cost of $9,131,678.50 and was resold at a gross profit of $723,411.14.

2. The respondent erred in his statements on pages 6 and 10 of his brief that the problem presented to this Court is one of diminishing importance by reason of the fact that enactment of Section 1241 of the 1954 Code "has largely eliminated the basis for future controversy in this

field". Section 1241 is specifically limited to cancellations of leases and certain distributors' agreements and respondent's own regulations 1.1241-1 state that "Section 1241 has no application in determining whether or not a cancellation not qualifying under that section is a sale or exchange". Future litigation can be expected in many other contract termination situations, specifically where servitudes are relinquished from a payor's property as in the instant case, in *Commissioner* v. *Goff*, 212 F. 2d 875, in cases involving patent licenses and copyrights and in many other situations.

3. The respondent erred in his statement on page 7 of his brief that the cancellation agreement of October 14, 1949, "merely resulted in the receipt by taxpayer of a sum which it might otherwise have realized as ordinary income over the remaining life of the agreement". Respondent's authorities for his contention are discussed and distinguished in the petition for writ of certiorari, except for the decision of the Court of Claims in *Appalachian Electric Power Co.* v. *U. S.*, 158 F. Supp. 138. That case held that a mere payment by TVA to Appalachian for agreed profits given up by Appalachian constituted ordinary income to Appalachian, as was decided by this Court in *P. G. Lake, Inc.* (April 14, 1958). No right in or servitude upon any property was transferred or released to the payor.

Respectfully submitted,

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